

1 **Richard C. Miller, F0458**  
2 **BANES HOREY BERMAN & MILLER, LLC**  
3 **Suite 201, Marianas Business Plaza**  
4 **P.O. Box 501969**  
5 **Saipan, MP 96950**  
6 **Tel: (670) 234-5684**  
7 **Fax: (670) 234-5683**  
8 **Email: RMiller@pacificlawyers.law**

9 *Attorneys for Plaintiffs*

10 **IN THE DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

11 **ÖZCAN GENÇ, HASAN GÖKÇE, and ) Case No. 1:20-CV-00031**  
12 **SÜLEYMAN KÖŞ, on behalf of themselves )**  
13 **and all others similarly situated, )**  
14 **Plaintiffs, )**  
15 **vs. )**  
16 **IMPERIAL PACIFIC INTERNATIONAL )**  
17 **(CNMI), LLC, IMPERIAL PACIFIC )**  
18 **INTERNATIONAL HOLDINGS LTD., and )**  
19 **IDS DEVELOPMENT MANAGEMENT & )**  
20 **CONSULTANCY, )**  
21 **Defendants. )**

22 Plaintiffs, through counsel, respectfully move the Court to dismiss without prejudice all  
23 of their claims against Defendant IDS Development Management & Consultancy (“IDS”), under  
24 Rule 41(a)(2) of the Federal Rules of Civil Procedure.

25 On March 31, 2021, the Court granted Plaintiffs an extension of time to serve IDS with  
26 the summons and complaint, and ordered that no later than June 3, 2021, Plaintiffs “shall file  
27 either proof of service, or a second status report showing good cause for a further extension of  
time, or a motion to dismiss under Federal Rule of Civil Procedure 41(a).” (Order, ECF No. 33.)  
Plaintiffs have not been able to serve IDS in conformity with the Hague Service Convention and  
cannot in good faith assure the Court that they will be able to do so in the foreseeable future. The

1 circumstances are detailed in Plaintiffs' June 2, 2021 status report (ECF No. 38) and the Second  
2 Declaration of undersigned counsel, attached thereto. Therefore, Plaintiffs now move to dismiss  
3 all claims against IDS voluntarily.

4 In the complaint, Plaintiffs pled two causes of action against IDS under the federal Fair  
5 Labor Standards Act ("FLSA") and one state-law breach of contract claim. The Court  
6 preliminarily certified a collective action on the FLSA claims (Civil Minutes, Dec. 30, 2020,  
7 ECF No. 11) and certified a class action on the breach of contract claim (Civil Minutes, Mar. 3,  
8 2021, ECF No. 30).

9 Rule 41(a)(1)(A) generally permits a plaintiff to voluntarily dismiss a defendant who has  
10 not answered or moved for summary judgment simply by filing notice of the dismissal.  
11 However, claims of a certified class may be voluntarily dismissed – or settled, or compromised –  
12 only with the Court's approval. Fed. R. Civ. P. 23(e), 41(a)(1)(A). It is up to the court to  
13 determine whether to give notice of the proposed dismissal to the class. Fed. R. Civ. P. 23(e)(1).  
14 While it is not settled whether a court order is needed to voluntarily dismiss a defendant in an  
15 FLSA collective action, there is case law strongly suggesting that the answer is yes. Voluntary  
16 dismissal without a court order is subject to "any applicable federal statute," Fed. R. Civ. P.  
17 41(a)(1), and courts have found that, at least with respect to settlements and compromises of  
18 claims, the FLSA envisions court approval. *See Kedney v. Southern Response Serv., Inc.*, Civil  
19 Action 1:19-00913-KD-N, 2020 WL 1695490 (S.D. Ala. Apr. 7, 2020); *Wolinsky v. Scholastic,*  
20 *Inc.*, 900 F. Supp. 2d 332, 340–41 (S.D.N.Y. 2012). Although Plaintiffs may be able to dismiss  
21 IDS from the FLSA claims simply by notice, in an abundance of caution they ask the Court to  
22 issue a voluntary dismissal order.

23 As to the class action, Plaintiffs submit that the Court can determine it does not need to  
24 give notice of the proposed dismissal to the class. A court must direct notice to all class members  
25 if the proposal would bind all class members. Fed. R. Civ. P. 23(e)(1)(B), 23(e)(2). Voluntary  
26 dismissal without prejudice would not bind class members or prevent them from instituting their  
27 own lawsuit against IDS. Given that Plaintiffs have been unable to serve IDS within the time  
28

1 allotted by the Court, without a voluntary dismissal the class risks an involuntary dismissal for  
2 failure to prosecute, which ordinarily “operates as an adjudication on the merits.” Fed. R. Civ. P.  
3 41(b). Hence class members may be adversely affected, not by a voluntary dismissal, but by an  
4 involuntary one. The purpose of Rule 23(e) is “to prevent collusion between plaintiffs and  
5 defendants in settling class actions to the detriment of the absent class members.” *Jenkins v.*  
6 *Massinga*, 592 F. Supp. 480 (D. Md. 1984); *see In re Hyundai and Kia Fuel Economy Litig.*, 926  
7 F.3d 539, 568–69 (9th Cir. 2019) (“Rule 23(e) ensures that unnamed class members are  
8 protected from unjust or unfair settlements affecting their rights” (internal quotation marks and  
9 citation omitted)). Here, there is no hint or risk of collusion between the named Plaintiffs and  
10 IDS. Undersigned counsel’s Second Declaration, attached to the June 2, 2021 status report (ECF  
11 No. 38), attests that the only impediment to prosecuting the action against IDS is the difficulty of  
12 serving them in Turkey.

13 For these reasons, Plaintiffs respectfully request that the Court issue an order dismissing  
14 IDS from this lawsuit without prejudice.

15 Respectfully submitted this 2nd day of June, 2021.

16 BANES HOREY BERMAN & MILLER, LLC

17 \_\_\_\_\_ /s/  
18 Richard C. Miller

19  
20  
21  
22  
23  
24  
25  
26  
27  
28